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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86265949
Applicant	Salvador Cababie
Applied for Mark	BAJA TU SEGURO.COM
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Date	02/24/2016

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In re Application of	:	
Salvador Cababie	:	
	:	Law Office: 103
Serial No. 86/265,949	:	
	:	Examining Attorney:
Filed: April 29, 2014	:	Theodore McBride
	:	
Mark: BAJATUSEGURO.COM	:	
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United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S APPEAL REPLY BRIEF

I. REPLY ARGUMENT

The Examining Attorney's Appeal Brief is flawed in one critical manner — it relies on the Examining Attorney's personal, unsupported belief as to what is the “more plausible” foreign translation of the mark, over the testimony of a bilingual Spanish/English speaker supported by reliable evidence. The Examining Attorney supports his belief with only Internet machine translations which return only the most common translation of words stripped of any contextual indicators. Notably, the Examining Attorney does not rely on even a single dictionary reference.

Applicant, in contrast, relies on the testimony of a live, bilingual Spanish and English speaker. This declarant in turn references several well-regarded Spanish-to-English dictionaries, as well as a dictionary of Spanish Internet terms. This is in addition, of course, to the declarant's own life knowledge which would be equivalent to an ordinary purchaser with knowledge of Spanish encountering this mark in the relevant marketplace. The Examining Attorney could have consulted a human translator for assistance with this matter, but chose not to.

The Examining Attorney also argues that the .COM portion of the applied for mark should be ignored and does not help to inform the proper translation of the term. To support this position he argues that generic TLDs like “.COM” “provide no meaningful source-identifying significance and are ubiquitous in the world today.” The flaw in this argument is that *source-identifying* significance is very different from *contextual* significance. Applicant is not arguing that the .COM portion of its mark is distinctive or source-identifying. Rather, Applicant argues simply that the .COM portion of its mark signals to the ordinary purchaser a relationship to the Internet. This contextual analysis is exactly the type required by T.M.E.P. § 1207.01(b)(vi)(B).

The Examining Attorney also offers no response at all to the evidence that the Mexican Trademark Office accepted this same mark for registration. While this action is, of course, not binding on the USPTO, it is nonetheless persuasive evidence that native Spanish speakers who are experts in trademark law do not believe that this mark is merely descriptive.

In light of all of the foregoing, Applicant respectfully requests that the decision of the Examining Attorney regarding his position with respect to the pending application be reversed, and the application be approved for publication.

Respectfully submitted,

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Dated: February 24, 2016

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